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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

CENTER FOR BIOLOGICAL DIVERSITY
and TURTLE ISLAND RESTORATION
NETWORK,

Plaintiffs,

v.

DIRK KEMPTHORNE, Secretary of the
United States Department of the Interior, and
the UNITED STATES FISH AND
WILDLIFE SERVICE,

Defendants.

No. C 07-5109 PJH

**JOINT CASE MANAGEMENT
STATEMENT AND PROPOSED
ORDER**

JOINT CASE MANAGEMENT STATEMENT

Pursuant to Civil L.R. 16-9, the parties to the above-entitled action jointly submit this Case Management Statement and Proposed Order and request the Court to adopt it as its Case Management Order in this case.

1. Jurisdiction and Service

The parties agree that this Court has jurisdiction pursuant to 28 U.S.C. § 1331 and the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Federal Defendants reserve the right to challenge the Plaintiffs' standing to bring this action, and to dispute venue in this district for any Plaintiff that may have standing to bring this action.

All parties have been served.

2. Facts

Plaintiffs bring this action to compel issuance of revised marine mammal stock assessment reports pursuant to section 117 of the Marine Mammal Protection Act ("MMPA"), 16 U.S.C. § 1386. Plaintiffs allege that the Federal Defendants, Dirk Kempthorne and the United States Fish and Wildlife Service (collectively "Service") are in violation of the deadlines to review, and if necessary, to revise assessment reports annually for strategic stocks and for stocks for which there is significant new information, and at least every three years for all other stocks, as provided in the MMPA. Federal Defendants acknowledge that final stock assessment reports were last prepared in 2002 for the polar bear, Pacific walrus and three stocks of northern sea otter in Alaska, and in 1995 for the other marine mammals under the Service's jurisdiction. Federal Defendants maintain that the Service has not unreasonably delayed reviewing and revising the stock assessment reports. Moreover, the Service is presently engaged in reviewing and revising the stock assessment reports for the marine mammals under its jurisdiction. 73 Fed. Reg. 6,994 (Feb. 6, 2008) (notice of availability of draft stock assessment reports for southwest Alaska, southcentral Alaska, and southeast Alaska stocks of the northern sea otter). No factual issues are in dispute.

3. Legal Issues

The parties dispute whether the circumstances of this case constitute "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1).

1 4. Motions

2 Federal Defendants anticipate they may bring a motion to dismiss and/or transfer on the basis
3 that Plaintiffs lack standing and on the basis of improper venue. If this motion is brought, Federal
4 Defendants anticipate bringing it within 60 days of the Initial Case Management Conference.

5 The parties anticipate that this case will be resolved on cross-motions for summary judgment.
6 No other motions are anticipated.

7 5. Amendment of Pleadings

8 No amendment of pleadings is anticipated.

9 6. Evidence Preservation

10 The Service intends to prepare an administrative record for this case. However, the parties
11 dispute whether this case is an administrative record case. Plaintiffs believe this is a case of agency
12 action unlawfully withheld or unreasonably delayed and therefore no administrative record exists.
13 Defendants contend that this is an administrative record case because allegations of agency failure
14 to act are reviewed on the administrative record.

15 7. Disclosures

16 The parties dispute whether this action is exempt from initial disclosures pursuant to Fed.
17 R. Civ. P. 26(e); nevertheless the parties agree that no initial disclosures are necessary.

18 8. Discovery

19 While the parties do not anticipate discovery, there is a dispute about whether this is an
20 administrative record case. Plaintiffs believe this is a case of agency action unlawfully withheld or
21 unreasonably delayed and therefore no admin record exists; however, Defendants contend that this
22 is an administrative record case. Nevertheless, the parties will work to resolve this issue. Plaintiffs
23 reserve the right to seek to supplement any record prepared by the agency. Defendants reserve the
24 right to object to any such supplementation or to any discovery.

25 9. Class Actions

26 Not applicable.

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10. Related Cases

There are no related cases.

11. Relief

Plaintiffs seek a declaratory judgment that the Service is in violation of the MMPA and the APA and injunctive relief compelling issuance of marine mammal stock assessment reports. No counterclaims are presented.

12. Settlement and ADR

The parties have had productive settlement discussions and believe that they have reached tentative agreement at the staff level on settlement of this matter. Because final settlement authority is vested in supervisory officials at the Departments of Justice and the Interior, further review is necessary before Federal Defendants may enter into any proposed settlement.

The parties do not believe that ADR would be helpful to resolution of this case.

13. Consent to Magistrate Judge

Federal Defendants do not consent to a magistrate judge for all purposes.

14. Other References

The parties do not believe this case is suitable for other references.

15. Narrowing of Issues

The parties believe this case is best resolved on cross-motions for summary judgment.

16. Expedited Schedule

The parties do not believe an expedited schedule is appropriate.

17. Scheduling

In light of the productive nature of settlement discussions to date, the parties propose that, if a final settlement is not reached, they file a status report with the Court within 30 days of the Initial Case Management Conference proposing a schedule for further proceedings.

18. Trial

The parties do not anticipate need for trial.

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19. Other Interested Parties

There are no non-party interested entities or persons.

20. Other Matters

None.

Dated: April 10, 2008

Respectfully Submitted,

/s/ Miyoko Sakashita

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

UNITED STATES DISTRICT JUDGE

